

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

In the Matter of

Telemarketing Rulemaking

FTC File No. R411001

COMMENTS OF VERIZON

I. INTRODUCTION

The Verizon companies¹ submit these comments in response to the Federal Trade Commission's Notice of Proposed Rulemaking to amend the Telemarketing Sales Rule, 16 C.F.R. part 310. These comments focus on the Commission's proposal for a National Do Not Call ("DNC") Registry.² Verizon supports this proposal as long as the National Registry replaces, and does not merely duplicate, existing state regulations. This would benefit both consumers and businesses that use telemarketing. Because a single national regime would benefit everyone, the Commission should allow businesses that are not now subject to the Commission's rules to agree to be bound by them in place of any state DNC regulations that might apply to them.

Verizon is a provider of communications products and services throughout the country. These products and services range from basic voice telephone service to Internet-based communications solutions. Verizon is also the largest directory publisher

¹ The Verizon companies ("Verizon") include affiliated local exchange carriers, long distance companies, Internet services, directory and other companies all sharing the Verizon name.

² Verizon continues to support the Commission's proposals to prohibit the intentional blocking of or interfering with Caller ID information.

in the world. Verizon engages in telemarketing campaigns across all 50 states, plus the District of Columbia, subjecting it to more than 25 different state DNC laws and agency guidelines designed to administer state DNC registries. At the federal level, Verizon is subject to the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Act, and specific telemarketing rules of the Federal Communications Commission.³ In addition, Verizon honors consumer DNC requests channeled through the national registry maintained by the Direct Marketing Association, and/or DNC requests received directly from its customers.

Verizon has a long-standing commitment to protect the privacy of its customers. Verizon's commitment is reflected in its industry leading privacy principles that govern its collection, use and disclosure of customer information. This sensitivity to the privacy concerns of its customers extends to the issue of telemarketing. In this regard, Verizon believes that a well-structured and efficiently administered national DNC program can provide an effective mechanism for protecting consumers who do not wish to receive telemarketing calls.

Over the last few years, however, Verizon has witnessed a proliferation of DNC laws and programs at the state level, with even more on the way. While all these programs have the same goal of protecting consumers from unwanted telemarketing calls, each does it in a different way with different procedural requirements. The growing number of state-specific variations has significantly increased the compliance challenge for national companies like Verizon. Because each of these state programs is managed independently by state-designated agencies, companies like Verizon must bear the cost

³ 47 C.F.R. § 64.1200.

and burden of developing a multitude of state-specific processes to ensure ongoing compliance. This is extremely difficult and costly.

For this reason, Verizon would support the creation of a National Registry if it was the sole DNC Registry for all U.S. consumers, thereby preempting all state regulated DNC registries. Verizon could not support such a registry, however, if its creation only meant the addition of another layer of regulation to an already inconsistent and confusing process of state regulations. A single program for all U.S. consumers would benefit consumers seeking DNC status and simplify the process for those required to comply. In addition, the modifications to the Commission's proposal discussed below will enhance the effectiveness of the National DNC Registry by creating clear and reasonable compliance obligations.

II. THE NATIONAL DNC REGISTRY PROPOSAL

Under the Commission's proposed rules, consumers would be permitted to add their telephone number to a National DNC Registry.⁴ Once the number is added, all telemarketers across the country, except those with express verifiable authorization to call the consumer, would be prohibited from telemarketing to that consumer.⁵ Under section 310.4(b)(1)(ii) and (iii), a seller would not be liable for violating the rules if it can demonstrate that in the ordinary course of business:

⁴ While section 310.4(b)(iii)(B) refers to a consumer placing his or her "name and/or telephone number" on the registry, Verizon is confident that the Commission understands that providing only a name would not be sufficient to stop telemarketing calls. Thus, Verizon suggests that both the consumer's name and number be required, with the language of the rule modified accordingly.

⁵ Section 310.4(b)(1)(iii)(A) of the Commission's rules also prohibits a company from calling a consumer who already has advised the company that he/she does not wish to receive telemarketing calls. Verizon already has a process in place to ensure that these requests are honored.

- (i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);
- (ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(2)(i);
- (iii) It uses a process to prevent telemarketing calls from being placed to any telephone number included on the Commission's do-not-call registry, employing a version of the do-not-call registry obtained from the Commission not more than 30 days before the calls are made, and maintains records documenting this process;
- (iv) It has maintained and recorded lists of persons it may not contact, in compliance with § 310.4(b)(1)(iii)(A) and (B);
- (v) It has maintained and recorded the express verifiable authorization of those persons who have agreed to accept telemarketing in compliance with § 310.4(b)(1)(iii)(B);
- (vi) It monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(2)(i); and
- (vii) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

Any party obtaining a copy of the Registry would be prohibited from using that Registry for any purpose other than complying with the DNC restrictions.

Securing and processing DNC lists is not an easy task. It is virtually inevitable that a telephone number will be missed even with the most sophisticated of processes. For instance, once a customer registers a number with a state DNC registry, Verizon has to "scrub" that information from every customer database in every Verizon line of business. Due to the exceptionally large volume of customer data that must be processed this procedure takes several weeks to complete. However, once the state DNC registry is scrubbed, there are several other processes that must be followed to ensure that telemarketing lists are generated with the correct and current information. Accordingly, Verizon supports the notion that companies making a good faith effort to comply with the

DNC lists, in the manner described above, should not be subject to strict liability whenever an error occurs. For reasons of privacy, Verizon also supports the prohibition on using a DNC list for any reason other than compliance with its rules.

The Commission should not specify the form and content of authorizations from consumers to accept telemarketing or require any particular process for recording such authorizations. Companies should be allowed the flexibility to communicate with consumers in the manner they deem most effective. The basic requirements (that the authorization clearly evidence the consumer's permission, that it be agreed to by the consumer and that it specify the consumer's telephone number) provide a sufficient framework for developing these documents. A written signature should not be required. Companies should be able to obtain oral, electronic and other forms of authorization as long as the authorizations are obtained and recorded in accordance with the procedures established by the companies.

III. THE COMMISSION SHOULD ESTABLISH THE NATIONAL DNC REGISTRY AS THE SOLE DNC PROGRAM FOR ALL U.S. CONSUMERS.

While existing state DNC laws may enjoy varying degrees of success in protecting consumers from unwanted telemarketing calls, a single national DNC program would benefit consumers and sellers:

- (1) by pointing consumers to a single program with clear guidelines, rather than the confusing menu of options (*i.e.*, state programs, the Direct Marketing Association registry, company-specific lists, etc.) currently available and
- (2) by establishing one set of requirements for sellers, thereby permitting them to engineer a single process that ensures ongoing compliance.

The establishment of a clear, uniform process for consumers and sellers would, in turn, increase the effectiveness of the DNC program and enhance consumer satisfaction.

Maintaining compliance with state DNC laws alone is a never-ending effort. For each state that maintains a DNC registry, Verizon must secure the latest DNC list in accordance with that state's time frames for issuance, which could be monthly or quarterly. In order to secure and process these lists on a timely basis, Verizon contracts with a number of third-party vendors. Once processed, the "scrubbing" of existing lists requires careful coordination among the Verizon business units engaged in telemarketing.

Uniformity across state DNC programs would certainly make Verizon's compliance efforts more manageable. These programs are anything but uniform, however. For example, for a company such as Verizon that serves tens of millions of customers, it reasonably can take anywhere from 45 to 60 days to incorporate a state's DNC list into its national marketing database. However, some states provide only 30 days to process their DNC lists, thereby increasing Verizon's cost of compliance. While this state's quarterly deadlines for downloading and "scrubbing" the state DNC list do not vary, the time available to process each new list is dependent on when the state makes the DNC list publicly available. Thus, for example, if the list is made available on March 1, sellers have 30 days to meet the April 1 compliance deadline. However, if the list is made available on March 13, sellers have only 18 days to comply. Problems such as this continue to multiply as new state DNC laws are enacted.

If a single DNC Registry is not created, each seller operating in a DNC state will have to comply with both the state DNC program and the national program. The added complexity, cost and heightened compliance challenge for sellers simply would offset the

incremental protection, if any, afforded consumers. Moreover, state lists and the National list will become duplicative of each other over time. As the state lists and the National list come to mirror each other, any practical, economic and/or policy justifications for separately maintaining the two sets of lists is gone.

In addition to the inefficiencies inherent in maintaining DNC lists at the state and national levels, the dual programs would create unreasonable compliance requirements for sellers. For example, several state DNC programs permit sellers to call a consumer who is on a DNC list if the seller has a pre-existing business relationship with the consumer. The Commission's proposed rules do not include such an exemption. Thus, in one of these states, a seller can telephone an existing customer who is on a DNC list in accordance with state law, but only at the risk of violating the Commission's rules. The seller may face a similar dilemma if the state's time frame for compliance is substantially shorter or longer than the Commission's rules permit.

The only way to avoid the unnecessary duplication of effort, increased compliance costs and the inefficient use of resources on a massive scale is to establish the National Registry as the sole registry for U.S. consumers. States should be permitted to add their existing official lists to the National list in order to protect the wishes of those who have already registered. By establishing uniform requirements for all sellers, a National Registry would avoid placing sellers in the impossible position of having to comply simultaneously with two different sets of rules.

Some businesses are not now subject to the Commission's telemarketing rules, while they may be subject to state telemarketing regulation. These businesses should be allowed to agree to be governed by the national DNC Registry program and to be

obligated to comply with it to the same extent as firms that are subject to the Commission's jurisdiction. State DNC programs would be preempted for these firms as well. Such a provision would encourage firms that are subject to DNC rules in only some states to subject themselves to nationwide obligations, a result that would plainly be in consumers' best interests.

IV. LIMITED MODIFICATIONS TO THE PROPOSED RULES ARE NECESSARY TO ENHANCE COMPLIANCE AND THE OVERALL EFFECTIVENESS OF THE PROGRAM.

- a. The rules should include an exemption allowing calls to consumers with whom the calling company has a pre-existing business relationship.**

Consumers with whom businesses have on-going relationships expect to be informed about new products and services that can save them money or improve their lives. Under the proposed rules, businesses would be prohibited from calling these consumers if they signed up on the National Registry, even if the consumer never intended to prohibit calls from his existing provider. In this respect, the proposal creates an all-or-nothing proposition for consumers. Either they bar all calls, including those they may wish to receive, or they do not participate and continue to receive calls they do not want. While these consumers would still be free to provide express authorization to be called, they are likely to be hampered by the fact that they would not necessarily know who is no longer calling them. A pre-existing business relationship exception would permit consumers to block all calls from unknown telemarketers, while letting calls from companies with which they do business to continue. If a consumer does not wish to receive calls from one of these companies, the consumer can specifically request to be placed on that company's DNC list.

The lack of an exemption for pre-existing business relationships also can lead to difficult questions regarding compliance. For example, if a furniture company calls a consumer to inform that consumer that her couch will be delivered on Tuesday, does the company violate the rules if that notice is followed by an inquiry as to whether the consumer would like to purchase a matching love seat that has just gone on sale? Would liability turn on whether this was an isolated incident or a company practice?

The all-or-nothing approach of the rules, even when tempered with the express authorization provision, does not strike a reasonable balance between a consumer's desire to hear from a company he or she does business with and the desire to stop annoying calls from companies with whom he or she does not do business. Once a consumer is on the National Registry, the vast majority of unwanted telemarketing calls should stop. Consumers should be allowed to deal separately with those companies with which they already have business relationships.

b. The rules should establish explicit timeframes for compliance.

The proposed rules should provide clear guidelines to ensure efficient administration of the program and to enhance seller compliance. The rules should be explicit regarding the frequency with which new DNC lists will be made available, the dates the lists will be made available and the amount of time sellers will have to bring themselves into compliance with new lists. This level of detail will permit sellers to establish internal procedures that insure both compliance and a degree of certainty for those charged with developing telemarketing programs.

As noted above, in some states Verizon has as long as 60 days to achieve compliance, while in others it has no set time frame. With lists as large as the ones the

Commission will likely be generating, sellers should be given a minimum of 45 days from the date the list is made available to bring their existing telemarketing lists into compliance. For the same reason, the lists should be updated quarterly and made available in multiple formats, including over the Web.

While shorter time frames would accelerate implementation of the program and speed with which additional consumers can get on the list, “speed to market” will only heighten the potential for non-compliance by companies struggling to meet the shorter deadlines. Consumers do not place themselves on DNC lists for the pleasure of seeing companies fined – they sign up to stop annoying calls.

V. Conclusion

A National Registry should be adopted only if it is the sole DNC Registry for the nation, thereby preempting all state DNC registries. The Commission should use this opportunity to establish a single National DNC program for U.S. consumers that will provide dramatic efficiencies which far outweigh any justification for maintaining different programs with the same goal in multiple states. And with the modifications to the proposal suggested above, the Commission’s National Registry would serve as an effective tool in protecting consumers from receiving unwanted telemarketing calls.

Respectfully submitted,

John M. Goodman

Attorney for the Verizon Companies

1300 I Street, N.W.
Washington, D.C. 20005
(202) 515-2563
john.m.goodman@verizon.com

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